

GUIDE TO A COMPLETE INITIATION PACKAGE

Formal consultation under the Endangered Species Act of 1973 as amended (ESA) can not begin until a complete initiation package has been received by the U.S. Fish and Wildlife Service (Service) (50 CFR §402.14). Also in informal consultation when seeking written concurrence from the Service that an action "may affect, is not likely to adversely affect" federally listed species similar information is needed to evaluate the determination and provide concurrence. In preparing documentation for consultation with the Service, keep in mind that the people who read or review your document may not be familiar with the proposed action or the project action area. Your document should present a clear line of reasoning that explains the proposed action and how you determined the effects of the proposed action on each of the threatened and endangered species and critical habitats that may be affected. Try to avoid technical jargon that is not readily understandable to people outside your agency or area of expertise. The next page is an outline for a complete initiation package followed by further information on details to consider, as appropriate, in the complete initiation package.

What is consultation?

Informal Consultation (Services 1998)

An optional process that includes all discussions and correspondence between the Services and a Federal agency or designated non-Federal representative, prior to formal consultation, to determine whether a proposed Federal action may affect federally listed species or critical habitat. This process allows the Federal agency to utilize the Services' expertise to evaluate the agency's assessment of potential effects or to suggest possible modifications to the proposed action which could avoid potentially adverse effects. If a proposed Federal action may affect a federally listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" federally listed species or designated critical habitat).

Formal Consultation (Services 1998)

A process between the Services and a Federal agency or applicant that: (1) determines whether a proposed Federal action is likely to jeopardize the continued existence of federally listed species or destroy or adversely modify designated critical habitat; (2) begins with a Federal agency's written request and submittal of a complete initiation package; and (3) concludes with the issuance of a biological opinion and incidental take statement by either of the Services. If a proposed Federal action may affect a federally listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" federally listed species or designated critical habitat).

EXAMPLE OUTLINE FOR A COMPLETE INITIATION PACKAGE

- A. Cover letter - Include the proposed action (project) title, purpose, and consultation number (if available). Summarize determinations for each federally listed species and designated critical habitat; you can:
 - 1. make a “no effect” determination and either do not request or request Service concurrence,
 - 2. request Service concurrence with a “may affect, not likely to adversely affect” determination, or
 - 3. request formal consultation for a “may affect, likely to adversely affect” determination.Determine whether the proposed action “is likely to jeopardize the continued existence of proposed species” or “adversely modify” proposed critical habitat.
- B. Project description - Describe the proposed action, including interrelated and interdependent actions, and the project area. Be specific and quantify whenever possible. Include maps, drawings, photographs, and any other materials that may help the reviewer understand the project.
- C. Species and suitable habitat and critical habitat description(s) - For each species describe:
 - 1. the affected environment (quantify whenever possible),
 - 2. the species biology pertinent to the project,
 - 3. current conditions for each species
 - a. range-wide,
 - b. in the project area,
 - c. cumulative effects of State and private actions in the project area, and
 - d. other consultations of Federal actions in the area to date, and
 - 4. designated critical habitat (if applicable).
- D. Effects of the proposed action - Describe effects of the proposed action on each species and/or designated critical habitat, including:
 - 1. direct effects,
 - 2. indirect effects,
 - 3. effects of interrelated and interdependent actions,
 - 4. cumulative effects, and
 - 5. quantity of incidental take.
- E. Conservation measures - Describe conservation measures, or actions taken to benefit or promote the recovery of federally listed species that are included as an integral part of the proposed action. These actions will be taken by the Federal agency or applicant, and serve to minimize or compensate for, project effects on the species under review. These may include actions taken prior to the initiation of consultation, or actions the Federal agency or applicant has committed to complete in a biological assessment or similar document. This can be included in the project description.
- F. Conclusion(s) - Provide effect determinations for each species and/or critical habitat.
- G. Literature Cited - Provide a list of literature cited or data referenced.
- H. List of Preparers - Provide a list of preparers/contacts, and their affiliations/qualifications.

ADDITIONAL DETAILS ON WHAT TO INCLUDE IN A COMPLETE INITIATION PACKAGE

Cover Letter

Describe the type of Federal action involved (*e.g.*, permit, funding, action, etc.) and letter of designation if you are the Federal agency's non-Federal representative. The request for formal consultation should be included in the cover letter and any request for concurrence with informal consultation determinations should be included in the cover letter.

Project Description

Describe what you are proposing to do. Provide the location of the proposed action including state, county, and township, range, and section(s) in which the proposed action occurs. Describe the action area. Include all areas to be affected directly or indirectly and not merely the footprint of the proposed action. Consider the perspective of federally listed species when delineating the action area. The Service can assist you in defining the action area.

Provide a location map showing proposed action location and major roads and drainages and a vicinity map showing the area of the proposed action. Provide a site map showing all of the project activities including the project site, staging areas, access routes, restoration sites, and compensation areas. Scales should be adequate to orient someone unfamiliar with project and project area. Provide an aerial image, such as a digital orthophoto, at a scale of 1 to 400, showing the project boundaries and an area of approximately 1,500 m (4,920 ft) surrounding the project (vicinity map). Photographs of the habitat can be helpful.

Provide a detailed description of the proposed action, including secondary project features such as staging areas, access roads, power lines, drainage ponds, etc. Describe construction and operation activities and the expected timing of these activities. Describe types of equipment that will be used, when it will be used (time of day, week, year), and duration of use (number of years). Discuss equipment features that minimize disturbance and other impacts, such as rubber tires, mufflers, tailgate bumpers, etc.

Species, Suitable Habitat, and Critical Habitat Description(s)

List the threatened, endangered, and proposed species observed or expected to be present and the proposed or designated critical habitat on site or in the project area, including either seasonal or temporary use. Generally, it is prudent to err on the side of the species and be as inclusive as necessary to ensure that all species potentially affected by the proposed action are included in the analysis.

Provide a description of the habitat and plant communities on site and within the project vicinity. Provide a description of methods used to classify and identify the habitats and species occurrences. Use of the Florida Land Use, Cover and Forms Classification System (FLUCCS)

codes (FDOT 1999) or habitat categories in the *South Florida Multispecies Recovery Plan* (Service 1999) are preferred.

Provide a description of typical habitat requirements for federally listed species that may occur on site. Descriptions of the life history of these species are not necessary for the assessment. Discuss surveys for species that are known or potentially occur in the project area.

Provide a description of survey methods, intensity, timing, and survey results for each federally listed, proposed, and candidate species and their habitat that were conducted for the proposed action. This discussion should follow accepted formats for published literature. You should consider consulting a species researcher or use survey methods described in published literature to design surveys. Discuss limitations and how surveys or assumptions were adjusted to account for such limitations. Survey methods must be site and species specific with sufficient detail to determine absence of the species or the species is assumed to be present on the site. Describe the background, training, and experience level those conducting surveys. Federally listed species may use habitat within the project area even if they are not detected during surveys if surveys are not carefully designed and carried out. A permit is necessary to handle federally listed species. Contact the nearest Service office for details.

Provide background information on the federally listed species and their designated critical habitat in the project area. Provide a description of the overall range and population status of the federally listed species. Describe population size and status and what part and size of the range/population will be affected by the proposed action. Include any previous environmental impact statements, environmental assessments, or other biological assessments for the project area. A useful source for biology and ecology of south Florida federally listed species is the *South Florida Multispecies Recovery Plan* (Service 1999)

Discuss the habitat and plant communities associated with the federally listed species found on site and within the project vicinity that would potentially be affected by the action. Discuss natural disturbances, such as the types and frequencies of natural fires, floods, or erosion events. Describe any current management actions that affect the proposed action site and vicinity.

Describe the designated critical habitat present and the constituent elements, or physical or biological features essential to the conservation of the species.

Describe current baseline conditions, which include past and present impacts of all Federal, State, or private actions and other human activities in the action area. Describe actions that have already occurred that are affecting the project area, the anticipated effects of all Federal actions that have already been consulted in the action area, and the effects of all State or private actions that are contemporaneous with the consultation in process.

Provide information obtained from biologists and other local sources, *e.g.*, county, State, and Federal agencies, local researchers, etc., that are familiar with the areas/species being assessed.

Effects of the Proposed Action

Logically describe the biological rationale to support a conclusion that the proposed action will have no effect on federally listed species or designated critical habitat for the administrative record. For example, an effects analysis for a proposed action in which the action area is not within the range and does not affect the range of any federally listed species or designated critical habitat may support a no effect determination.

Describe how the proposed action will affect each threatened and endangered species and their associated habitat and designated critical habitat. Effects can be positive or negative and may include habitat modification (change in plant communities, change in serial stage, change in edge and fragmentation, chemical changes, hydrological changes, etc.), disturbance (visual, auditory, etc.), and physical changes (water or soil chemistry, air quality, etc.). Describe measures taken to avoid or reduce adverse effects to each species. Discuss how each species will likely respond to changes to habitat suitable for that species. Quantify the amount and distribution of effects (*e.g.*, acres of habitat affected by basin or watershed, location and number of individuals or percent of population affected). Describe and quantify the effects to designated critical habitat.

Direct and indirect effects

Describe effects of actions that are already affecting the primary action area. The cumulative effects of past actions are part of the baseline conditions from which this proposed action is assessed.

Describe and analyze the effects of the action that would have a direct effect on the species, for example, actions that would immediately remove or convert habitat or displace animals or plants, or that would affect individuals such as noise disturbance or chemical applications, or that would alter hydrology, etc.

Describe and analyze the effects of the action that would indirectly affect the species, for example, effects to individuals or habitat that would occur later in time (*e.g.*, actions that would affect a species food supply, etc.).

Interdependent and interrelated actions

Describe and analyze the effects of interdependent actions. These are actions that have no independent utility apart from the primary action. Examples of an interdependent action for a residential development may include the construction, maintenance, and use of a road required to access the development.

Describe and analyze the effects of interrelated actions. These are actions that are part of the primary action and dependent upon that primary action for their justification. An example of an interrelated activity for a residential development may include the power line.

Both the interdependent and interrelated activities are assessed by applying the “but for” test that asks if any action and its associated impacts would occur “but for the proposed action.”

Cumulative effects

Describe and analyze the effects of actions that are cumulative to the primary action. Cumulative effects include the effects of unrelated future State and/or private activities, not involving Federal activities, that are reasonably certain to occur within the project area. An example of an action that could be considered cumulative to the primary action would be a future housing development located adjacent to the Federal activity of building a highway. A future activity is “reasonably certain to occur” if it is likely to occur considering economic, administrative, or legal considerations; implementation of the activity need not be guaranteed. An analysis of cumulative effects includes discussing assumptions, quantifying amount and location of effects, and discussing the likely response of federally listed species to these cumulative effects.

Any research findings that are used in the analysis of the effects of an action should be cited. This adds to the credibility of the analysis.

Incidental take

Every effort should be made to assess whether or not take of a federally listed species is likely to result from a proposed action. Numbers of individuals likely to be taken or associated with the amount of habitat that will be lost should be provided. Take as defined in section 3(18) of the ESA means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Incidental take as defined in section 10(a)(1)(B) of the ESA means “any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.” Take may occur only to individuals of a species or to the number of individuals associated with the habitat lost, not to designated critical habitat. The take prohibition does not extend to federally listed plants or to proposed or candidate species.

Conservation Measures

Describe actions incorporated into the design of the proposed action to avoid or reduce adverse effects to and incidental take of federally listed species. Once you have completed an analysis of effects and quantified incidental take, additional actions may be identified to avoid or reduce adverse effects or incidental take. These conservation measures can be described and discussed as part of the proposed action. Conservation measures are actions that, when implemented by the Federal agency or applicant, would reduce the adverse impacts of the proposed activity.

Conservation measures may be alterations in the proposed activity, such as timing restrictions, access closures, or changes in project features or location. The measures should be as specific as possible. Conservation measures may be developed in collaboration with the Service with the

objective of reducing significant project impacts. These conservation measures would assist in compliance under the ESA through the section 7 informal consultation process.

Conclusions

Document your decision. The finding or determination of effect is the conclusion of the assessment and indicates the overall effect of the proposed activity to federally listed species or designated critical habitat. This finding must be supported by the documentation presented in the biological analysis. The analysis presented should lead the reviewer through a logical, biological rationale of effects that leads to a well-supported conclusion. Do not assume that Service staff reviewing your document is familiar with your proposed action or action area. If there is little or no connection or rationale provided to lead the reviewer from the project description to the effect determination, the Service cannot assume conditions not presented in the analysis. If there is a difference of opinion, the Service must error on the side of the species.

The finding of effect is made by the Federal action agency. A recommended finding may be presented to the Federal action agency by the non-Federal representative. The Service may ask the Federal action agency to revisit its decision or provide more data if the conclusion is not adequately supported by the biological rationale.

The Federal action agency may make only one of the following effect determinations for each federally listed species or designated critical habitat:

1. “No effect” - A “no effect” determination means that there are absolutely no effects from the proposed action, positive or negative, to federally listed species. A “no effect” determination does not include effects that are insignificant (small in size), discountable (extremely unlikely to occur), or beneficial. “No effect” determinations do not require written concurrence from the Service unless the National Environmental Policy Act analysis is an Environmental Impact Statement. However, the Service may request copies of no effect assessments for our files. Written concurrence from the Service for no effect determinations may be provided on request for the administrative record.
2. “May affect, not likely to adversely affect” - A “may affect, not likely to adversely affect” determination may be reached for proposed action where all effects are beneficial, insignificant, or discountable. Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat (*i.e.*, there cannot be a “balancing,” where the benefits of the proposed action would be expected to outweigh the adverse effects - see below). Insignificant effects relate to the size of the effects (and should not reach the scale where take occurs). Discountable effects are those that are extremely unlikely to occur. This conclusion is usually reached through the informal consultation process and written concurrence from the Service exempts the proposed action from formal consultation.
3. “May affect, likely to adversely affect” - A “may affect, likely to adversely affect” determination means that all adverse effects cannot be avoided. A combination of beneficial and adverse effects is still “likely to adversely affect” even if the net effect is neutral or

positive. Section 7 of the ESA requires that the Federal action agency requests initiation of formal consultation with the Service when a “may affect, likely to adversely affect” determination is made. A written request for formal consultation should accompany the complete initiation package.

The determination for proposed species or proposed critical habitat may be:

“Likely to jeopardize proposed species/adversely modify proposed critical habitat” - This is the appropriate conclusion when the Federal action agency or the Service identifies a situation where the proposed action is likely to jeopardize the proposed species or adversely modify the proposed critical habitat. If this conclusion is reached, a conference with the Service is required. A written request for a conference should accompany the complete initiation package. The Service will assist the Federal action agency with their determination for proposed species or proposed critical habitat when requested.

To jeopardize is to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both survival and recovery of a federally listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

The destruction or adverse modification of critical habitat is a direct or indirect alteration that appreciably diminishes the conservation value of critical habitat for a federally listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Literature Cited

Provide a list of supporting documentation that you used to reach your conclusion. Include any agency reports or data that may not be available to the Service.

List of Preparers

List the preparers and the species experts you contacted when preparing the complete initiation package. Avoid making statements that place the responsibility of the decision or determination on the shoulders of species experts or any other contact. The decision is made by the Federal action agency.

USE OF BEST SCIENTIFIC AND COMMERCIAL DATA AVAILABLE

The ESA and accompanying regulations require the Service to use the best scientific and commercial data available in carrying out section 7 consultations. Commonly, habitat relationships have not been well documented when species are listed. The Service routinely advises agencies of the need for obtaining or conducting site-specific species surveys when addressing listed species issues in biological analyses. While neither the Act nor the regulations require an agency to collect site-specific data, it is often in the agency's best interest to do so. Biological analyses that lack site-specific surveys require the Service to consider the "worst case scenario" and to "err in favor of the species" when conducting consultation. This situation could delay concurrence with a determination or push a proposed action nearer to jeopardy.

The Service recommends that surveys be conducted for species with a strong relation to specific habitat types, particularly with subsequent potential for incidental take when these habitat types are modified or disturbed by proposed project activities. Standard survey techniques should be followed. While the Service will not design a survey or study proposal for a biological analysis, we may be able to review and critique study design.

COMMON FLAWS IN DEVELOPING AN EFFECT DETERMINATION

The preamble for the section 7 regulations (50 CFR §402.14: 19948) states that Federal agencies may, through informal consultation, utilize the expertise of the Service to evaluate the agencies' assessment of potential effects. The Service may provide written concurrence that the project is "not likely to adversely affect" federally listed species or critical habitat if the Federal agency's assessment identifies only beneficial, insignificant, or discountable effects and formal consultation is not required. Service concurrence is contingent upon the biological analysis providing an adequate justification for the effect determination. Quite often, the Service must decide whether to concur with an effect determination without adequate supporting information. The determination may be correct, but the Service cannot make the "leap of faith" to accept it without supporting evidence and rationale. This is an important point that often delays the informal consultation process.

Quite frequently, effect determinations are not necessarily wrong; they simply are not justified in the Federal agency's analysis. The analysis should lead the reviewer through a discussion of effects to a logical, well-supported conclusion. For example, certain arguments might justify a "may affect, not likely to adversely affect" determination, but do not support a "no effect" determination. It is important to remember that "no effect" means literally no effect, not a small effect or an effect that is *unlikely* to occur. If effects are insignificant (in size) or discountable (extremely unlikely), a "may affect, not likely to adversely affect" determination is probably appropriate. Examples of inappropriate arguments commonly used to justify effect determinations follow.

The "Displacement" Approach: This relates to the argument that removal of habitat or disturbance of individuals results in a "not likely to adversely affect" or a "no effect" determination because individuals can simply go elsewhere. Except possibly for wide-ranging species, this argument is usually unacceptable. Generally other suitable habitats will already be occupied by other individuals of that species who would then also be affected, probably adversely so, by the proposed action. When the argument is used, some rationale must be provided to indicate there are adequate refugia available and the impact will not occur during denning or nesting periods. In any case, a "no effect" call in these situations is usually not appropriate. The species will be affected but, depending on the situation, perhaps not adversely.

The "Not Known To Occur Here" Approach: The operative word here is known. Unless adequate surveys have been conducted or adequate information sources have been referenced, this statement is difficult to interpret. It begs the questions: Have you looked? And how have you looked? Always reference your information sources. Have you queried the Florida Fish and Wildlife Conservation Commission database, for example? Species occurrence information that is generated through one day/year surveys or "wildlife observation records" (which more closely reflect the location of people, for example) are usually inadequate to justify species absence. For some species, nest sites are surveyed yearly. In situations where wide-ranging species are difficult to census, however, it may be advisable to assume species presence if the habitat is present. The timing of surveys is also important. Consider the life history of the species when scheduling surveys. Many plants are only identifiable while flowering, for example.

The “We’ll Deal With It Later” Approach: This approach may be used when consultation needs to be completed quickly (*e.g.*, to secure Federal funds) before adequate surveys are conducted or biological analyses are completed. This approach may be used to justify a “no effect” or a “may affect, not likely to adversely affect” determination. Basically, the approach is that if the Service will concur with a “no effect” or a “not likely to adversely affect” determination now, the Federal agency will promise to coordinate if federally listed species are located and do whatever the Service wants to protect them. This approach offers little to no assurance that the species will not be affected by the project prior to being “discovered,” is not consistent with consultation procedures, and Service concurrence is seldom given. Although we try to review projects in a timely manner, generally each Service biologist is reviewing a number of projects from a variety of Federal agencies at any one time. Federal agencies need to front load project planning to include adequate time to conduct/require surveys, gather information, complete analyses, and conduct interagency consultation. Federal agencies that have coordinated project review through informal consultation to identify conservation measures and to avoid or reduce adverse effects generally receive more timely Service concurrence and biological opinions. Early communication with the Service can expedite the process.

The "Leap of Faith" Approach: This refers to the assumption that the Service reviewer is familiar with the project and/or its location, and there is no need to fully explain the impact the project may have on federally listed species. Usually, there is little or no connection or rationale provided to lead the reader from the project description to the effect determination. Remember the Far Side comic that shows a professor writing lengthy formulas on the blackboard with the phrase “*A miracle occurs here*” stuck in somewhere to make it his theory work? We cannot assume conditions that are not presented in the analysis. Doing so would leave both the project proponent and the Service at risk of challenge by third parties that do not necessarily share in or trust our good working relationship. Analyses must logically lead the reviewer from current conditions, through potential effects of project implementation on federally listed species or designated critical habitat, to an effect determination.

For more information on consultation and Federal permits contact:

U.S. Fish and Wildlife Service
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960
772-562-3909
or on the web at <http://verobeach.fws.gov/index.htm>

Literature Cited

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